

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1432

AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 8-1-13-18.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18.5. (a) Except as provided in subsection (i), a corporation organized under this chapter **or a corporation organized under IC 23-17 whose membership includes one (1) or more corporations organized under this chapter** may withdraw from the jurisdiction of the commission. A corporation **organized under this chapter** that withdraws from the jurisdiction of the commission must comply with all provisions of this chapter that do not directly concern the commission and must continue to pay the public utility fee required under IC 8-1-6. A member of a corporation that has withdrawn from the commission's jurisdiction shall have reasonable access to the meetings and the minutes of the meetings of the corporation's board of directors, except for executive sessions that concern personnel matters and confidential or proprietary matters that may:

- (1) invade the privacy of a member or an employee of the corporation; or
- (2) impair the corporation's bargaining, legal, or competitive position;

if the matter is disclosed to the member.

(b) A corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must first obtain the approval of the members.

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(c) The board of a corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must conduct a referendum of the members of the corporation to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(d) A board must send written notice of the board's intent to conduct a referendum to the commission before the board may conduct the referendum.

(e) A referendum may be conducted at an annual or special meeting of the members held under section 8 of this chapter if a quorum is present.

(f) Written notice of a meeting at which a referendum is to be conducted must be sent to every member not less than thirty (30) days before the date of the meeting. The notice must contain the following information:

- (1) The place, date, and hour of the meeting.
- (2) The fact that a referendum will be conducted at the meeting to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.
- (3) The fact that no proxies will be permitted to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(g) A board shall distribute secret ballots to the members present at the meeting. The ballots must be in a form substantially equivalent to the following:

- \_\_\_ YES. I want the corporation to withdraw from the jurisdiction of the commission.
- \_\_\_ NO. I want the corporation to remain under the jurisdiction of the commission.

Only those members present in person at the meeting may vote. Each member is entitled to one (1) vote on the question of the ~~corporation~~ **corporation's** withdrawal from jurisdiction of the commission. If a majority of the members present vote in favor of withdrawing from the jurisdiction of the commission, the withdrawal is effective thirty (30) days after the date of the vote. If less than a majority of the members vote in favor of withdrawing the corporation from jurisdiction of the commission, the corporation is prohibited from conducting another referendum concerning withdrawal for eighteen (18) months following the date of the meeting at which the vote was taken. Parties aggrieved by the conduct of the referendum must file an action in the circuit or superior court with jurisdiction in the county where the corporation has the corporation's principal office to allege noncompliance with this

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section not more than thirty (30) days after the date of the vote.

(h) If a corporation withdraws from jurisdiction of the commission, the corporation's secretary shall not more than five (5) days after the date of the vote send a verified certification of the vote to the commission affirming that all the requirements of this section were met and include all of the following:

- (1) The total membership of the corporation.
- (2) The total number of members voting in the referendum.
- (3) The actual vote, for and against withdrawal.

(i) If a corporation withdraws from the jurisdiction of the commission, the commission shall continue to exercise jurisdiction over the corporation only as to the following:

- (1) Electric service area assignments under IC 8-1-2.3.
- (2) Certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2, IC 8-1-8.5, or IC 8-1-8.7.
- (3) Water utility disputes under IC 8-1-2-86.5.

(j) Whenever two (2) or more corporations organized under this chapter consolidate or merge under section 16 of this chapter, and one (1) but not all of the corporations has withdrawn from the jurisdiction of the commission under this section, the consolidated or merged corporation is under the jurisdiction of the commission until the consolidated or merged corporation withdraws from jurisdiction of the commission under this section, unless the agreement for consolidation or merger approved under section 16 of this chapter includes the withdrawal from the jurisdiction of the commission under this section.

(k) A board of a corporation that has withdrawn from the jurisdiction of the commission under this section must conduct a referendum of the corporation's members to determine whether the corporation should return to the jurisdiction of the commission upon receipt of:

- (1) a petition for a referendum signed by not less than fifteen percent (15%) of the corporation's members; or
- (2) a resolution ordering a referendum adopted by a majority vote of the board of directors of the corporation.

Upon receipt of the petition or adoption of the resolution by the board, the board shall inform the commission of the petition or resolution and shall thereafter conduct a referendum at the next annual meeting of the corporation held under section 8 of this chapter, or if the next annual meeting is more than ninety (90) days after the date the petition was received or resolution for referendum was adopted by the board, then at a special meeting called by the board and held not more than ninety

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(90) days after receipt of the petition or adoption of the resolution. The process provided in subsections (d), (e), (f), (g), and (h) shall be followed when conducting a referendum under this subsection, except the form of the ballots must be as follows:

\_\_\_ YES. I want the corporation to return to the jurisdiction of the commission.

\_\_\_ NO. I want the corporation to remain outside the jurisdiction of the commission.

If a corporation returns to the jurisdiction of the commission, the commission shall resume all the jurisdiction it would have if the corporation had not withdrawn, effective thirty (30) days following the date the referendum was conducted. If less than a majority of the members voting at the referendum vote in favor of returning to the jurisdiction of the commission, a referendum on the question presented at the referendum may not be conducted for eighteen (18) months following the date of the vote.

**SECTION 2. An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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